



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 111 0034]**

**Charlotte Pipe and Foundry; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before May 2, 2013.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/charlottepipeconsent> online or on paper, by following

the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Write "Charlotte Pipe, File No. 111 0034" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/charlottepipeconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William L. Lanning (202-326-3361), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 2, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 2, 2013. Write “Charlotte Pipe, File No. 111 0034” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/charlottepipeconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Charlotte Pipe, File No. 111 0034” on your

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 2, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Charlotte Pipe and Foundry Company (hereinafter "CP&F") and its wholly-owned subsidiary, Randolph Holding Company, L.L.C. (hereinafter "Randolph") (hereinafter jointly referred to as "Charlotte Pipe" or "Respondents"). The purpose of the Consent Agreement is to address the anticompetitive effects resulting from Charlotte Pipe's 2010 acquisition (the "Acquisition") of the cast iron soil pipe ("CISP") business of Star Pipe Products, Ltd. ("Star Pipe"). The parties to that transaction also entered a "Confidentiality and Non-Competition Agreement." The Acquisition was not reportable under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. 18a ("HSR Act"). The administrative complaint ("Complaint") alleges that the Acquisition violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Under the terms of the proposed Consent Agreement, Charlotte Pipe is: required to provide prior notification to the FTC, for a period of ten years, of an acquisition of any entity engaged in the manufacture and sale of CISP products in or into the United States; prohibited from enforcing the “Confidentiality and Non-Competition Agreement” against Star Pipe; and required to inform its customers and the public of the Acquisition and other transactions involving other CISP competitors.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Decision and Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by Charlotte Pipe that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

## **I. The Complaint**

The Complaint makes the following allegations.

### **A. The Respondents**

CP&F is a privately-held corporation with its principal place of business located at 2109 Randolph Road, Charlotte, NC 28207. CP&F is one of the largest producers and sellers of CISP products in the United States.

Randolph is a wholly-owned subsidiary of CP&F. Randolph, acting on behalf of CP&F, executed both the Acquisition agreement as the “Buyer” of Star Pipe’s CISP business and the “Confidentiality and Non-Competition Agreement” referenced herein.

## **B. The Product and Structure of the Market**

CISP products are components of pipelines systems used in buildings to transport wastewater to the sewer system, to vent the plumbing system, and to transport rainwater to storm drains. The end-users of CISP products are construction firms, plumbers, or developers.

The relevant line of commerce within which to analyze the effects of the Acquisition is the market for the sale of CISP products for use in commercial, industrial, and multi-story residential buildings in the United States. Plastic products are not a viable substitute for CISP products because state and local building codes in the United States generally require the use of CISP products in commercial, industrial, and multi-story residential buildings.

The relevant geographic market within which to analyze the effects of the Acquisition is no broader than the United States, and may contain smaller geographic markets consisting of states, multi-state regions, or metropolitan areas.

The United States CISP products market is highly concentrated. At the time of the Acquisition, two firms, Charlotte Pipe and McWane Inc., sold in excess of ninety percent of the CISP products in the United States. Companies that sell imported CISP products, including Star Pipe, accounted for the remaining sales.

## **C. Star Pipe and the Acquisition**

In 2007, Star Pipe entered the United States CISP products market. Between 2007 and 2010, Star Pipe expanded its sales base throughout the United States. In contested markets, Star Pipe acted as a disruptive force, competing on price and service to the benefit of consumers.

In July 2010, Charlotte Pipe executed an Asset Purchase Agreement with Star Pipe to acquire the assets of Star Pipe's CISP business for approximately \$19 million. Pursuant to the agreement, Charlotte Pipe purchased, among other things, Star Pipe's inventory, its production equipment located in China, and its business records and customer list. The parties to the agreement also executed a "Confidentiality and Non-Competition Agreement" that prohibited Star Pipe and certain Star Pipe employees from competing with Charlotte Pipe in the United States, Mexico, and Canada for a period of six years. In addition, Star Pipe agreed to keep the Acquisition confidential and to send to its customers a letter indicating that it had decided to exit the CISP business. After the Acquisition, Charlotte Pipe destroyed the CISP production equipment that it acquired from Star Pipe.

#### **D. Conditions of Entry**

Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

#### **E. Effects**

The effects of Charlotte Pipe's acquisition of Star Pipe's CISP business have been a substantial lessening of competition in the relevant markets. Specifically, the Acquisition has: eliminated actual, direct, and substantial competition between Charlotte Pipe and Star Pipe in the relevant markets; substantially increased the level of concentration in the relevant markets; eliminated a maverick firm; increased the ability of Charlotte Pipe unilaterally to exercise market power; and prevented Star Pipe and certain Star Pipe employees from re-entering the CISP products market for a period of six years.

## **II. The Proposed Order**

Paragraph II of the Proposed Order requires Charlotte Pipe to provide prior notification to the Commission of an acquisition of any entity engaged in the manufacture and sale of CISP products in or into the United States. This paragraph also requires Charlotte Pipe to comply with premerger notification procedures and waiting periods similar to those found in the HSR Act.

This provision is necessary because Charlotte Pipe has previously acquired several firms in the CISP products market in non-reportable transactions. The Proposed Order affords the Commission an appropriate mechanism to review all proposed acquisitions by Charlotte Pipe in the CISP products market to guard against future anticompetitive transactions.

Paragraph III of Proposed Order prevents Charlotte Pipe from enforcing the Confidentiality and Non-Competition Agreement. This frees Star Pipe, and its current and former employees, to enter and compete against Charlotte Pipe in the United States, Canada, or Mexico.

Paragraphs IV-VII impose reporting and other compliance requirements. In particular, Charlotte Pipe is required to send a letter to its customers and to maintain a link on its website relating to the Acquisition and Charlotte Pipe's other non-reportable transactions, including Matco-Norca in 2009, DWV Casting Company ("DWV") in 2004, and Richmond Foundry, Inc. ("Richmond Foundry") in 2002. This provision is appropriate because Charlotte Pipe's confidential acquisitions are not widely known in the CISP industry and have given rise to a perception among distributors and end-users that importers of CISP products are transient and unreliable operations. The proposed order serves to inform market participants about Charlotte Pipe's role in the exit of Star Pipe, Matco-Norca, DWV, and Richmond Foundry from the CISP industry.

The Proposed Order will expire in 10 years.



By direction of the Commission.

Donald S. Clark  
Secretary.

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